APPENDIX D

Legislative History of Section 312 of the Communications Act of 1934, As Amended

As demonstrated in the narrative below, Section 312 of the Communications Act has been the repository of the Commission's authority to administratively enforce the provisions of the Act and the Commission's Rules. As originally enacted, Section 312 granted the Commission power to modify and to revoke licenses. In 1952, the authority to issue cease and desist orders was granted, and in 1960—the last legislative broadening of powers under Section 312—the authority to impose forfeitures was conferred.

At the time of its creation, the Commission's sole administrative penalty for violation of the Communications Act or the Commission's regulations was the authority to revoke licenses. Cf., e.g., S. Rep. No. 49, 81st Cong., 1st Sess. 4 (1949). As originally enacted, Section 312 of the Act, entitled "Revocation of Licenses", consisted of two subsections. The second subsection granted to the Commission authority to modify broadcast station licenses in certain circumstances. More importantly, however, subsection (a) accorded the Commission authority to revoke station licenses

> . . . for false statements either in the application or in the statement of fact which may be required by section 308 hereof, or because of conditions revealed by such statements of fact as may be required from time to time which would warrant the Commission in refusing to grant a license on an original application, or for failure to observe any of the restrictions and conditions of this Act or of any regulation of the Commission authorized by this Act or by a treaty ratified by the United States . . . .

Certain procedural prerequisites to the Commission's exercising its power of revocation were included in subsection (a).

In subsequent years, a number of legislative efforts were made to broaden the Commission's power to enforce both the Act and the Commission's regulations. For it was felt that, particularly in the case of lesser offenses by licensees, there was a "need for some means of enforcement of the act and for the prevention of violations of the act or to [sic] rules short of the extreme penalties of revocation or criminal prosecution which [the Commission] is naturally loathe to invoke." Hearings on S. 1333 Before a Subcommittee of the Senate Committee on Interstate and Foreign Commerce, 80th Cong., 1st Sess. 51 (1947) (Statement of Charles R. Denny, then Chairman, Federal Communications Commission).

Accordingly, S. 1333, 80th Cong., 1st Sess., introduced in 1947, proposed a new cease and desist power as subsection (b) to Section 312 of the Act:

> Where a station licensee (1) has failed to operate substantially as set forth in the license, or (2) has failed to observe any of the restrictions and conditions of this Act or of a treaty ratified by the United States, or (3) has violated or failed to observe any rule or regulation of the Commission authorized by this Act, the Commission may institute a proceeding by serving upon the licensee an order to show cause why it should not cease and desist from such action. Said order shall contain a statement of the particulars and matters with respect to which the Commission is inquiring and shall call upon the licensee to appear before the Commission at a time and place therein stated, but in no event less than 30 days after receipt of such notice, and give evidence upon the matter specified in such order. If, after hearing, or a waiver thereof by the licensee, the Commission determines that a cease and desist order should issue, it shall make a report in writing stating the findings of the Commission and the grounds and reasons therefor and shall cause the same to be served on said licensee, together with such order.

Favorably reporting on that provision of S. 1333, the Senate committee agreed with the Commission "that some method of procedure short of revocation should be provided for minor or less serious violations. It is therefore provided [in S. 1333] that the Commission may issue cease-and-desist orders for such less serious violations." S. Rep. No. 1567, 80th Cong., 2d Sess. 11 (1948). The House failed to act on S. 1333 prior to the end of the 80th Congress.

During the same year, 1948, the Senate Committee on Interstate and Foreign Commerce appointed a subcommittee "to study certain communications problems", including the organization and administrative problems of the FCC, cease and desist orders, radio and wire communications frauds, clear channels and superpower in AM broadcasting, frequency allocation in FM broadcasting, censorship of radio programs, and common carriers. S. Rep. No. 49, 81st Cong., 1st Sess. 1 (1949). The subcommittee's report was submitted to the full committee on January 24, 1949, and approved and adopted by the committee on February 9, 1949. *Ibid.*

As to Section 312 of the Communications Act, the report concluded that changes should be made, since the only administrative penalty available for violations of the Act or the Commission's Rules was revocation, and that penalty was unlikely to be used for minor offenses. As stated in the report:

> Your subcommittee recommends, therefore, the enactment of a section which would authorize the issuance of cease and desist orders for less serious violations. The revocation penalty would remain in effect for two classes of violations: (1) for cases in which the Commission learns of facts or conditions after the granting of a license which would have warranted it to refuse a license originally had it known those facts; (2) for violation of a cease-and-desist order. Both the revocation and cease-and-desist procedure would remain, of course, subject to judicial appeal.

> Such a provision was a part of the White bill (sec. 12 of S. 1333, 80th Cong.) and had the general support of the Commission, the industry, and members of the bar who practice before the Commission. The cease-and-desist order procedure has had considerable trial in other administrative agencies and has proved generally satisfactory.

Id. at 4-5.

Subsequently, on May 31, 1949, S. 1973, 81st Cong., 1st Sess., was introduced by Senator McFarland. Section 11 of the bill proposed a new Section 312(b) to the Communications Act, identical in form to that proposed in S. 1333 in the 80th Congress, *supra.* During the Senate hearings on the bill, the Commission, through its Acting Chairman, Rosel H. Hyde, endorsed the measure, but urged that the applicability of the cease and desist provision not be restricted to station licensees:

> The Commission believes that it may be advisable to extend the power to issue cease and desist orders where any person, and not merely station licensees, has violated the Communications Act, a Treaty, or the Commission's Rules. Such an amendment would make the cease and desist order provisions applicable to persons who are radio station operators who may violate the Act or Commission's Rules as well as to station licensees.

Hearings on S. 1973 Before a Subcommittee of the Senate Committee on Interstate and Foreign Commerce, 81st Cong., 1st Sess. 20 (1949). The bill reported out of the Senate committee adopted the suggestion, making the cease and desist provision applicable to "any person" rather than "a station licensee". S. 1973 was passed by the Senate on August 9, 1949. The measure was not acted on by the House.

However, H.R. 4251, also introduced in the 81st Congress, which proposed an amended Section 4(g) of the Communications Act, was considered by the Senate Committee

on Interstate and Foreign Commerce. As reported out by the Committee, the bill was amended to include all of the provisions of the earlier S. 1973. S. Rep. No. 2119, 81st Cong., 2d Sess. (1950). While the measure was passed in its amended form by the Senate on July 26, 1950, no further action was taken prior to the end of the 81st Congress.

In the first session of the 82nd Congress, S. 658, virtually identical to S. 1973 and H.R. 4251 in the 81st Congress, was introduced on January 23, 1951. Two days later, the bill was reported out of committee unchanged, S. Rep. No. 44, 82d Cong., 1st Sess. (1951), and was referred to the House.

In the House hearings on S. 658, Wayne Coy, then Chairman of the Commission, endorsed the bill's grant of cease and desist powers, but urged the grant of additional administrative sanctions—the authority to suspend licenses and to impose fines. In Chairman Coy's words:

> S. 658 proposes to give the Commission authority to issue cease and desist orders. We think this will be useful in certain types of cases. However, our experience in recent years leads us to believe that cease and desist orders alone will not adequately take care of the problem. Therefore, we have recommended . . . that in addition to the authority to reject a license or to issue cease and desist orders, the Commission should be authorized to suspend licenses for periods up to 90 days or to impose reasonable fines for violation of the Act or the Commission's Rules. . . . Authorizing the Commission to utilize such lesser sanctions is all the more important in the light of the great increase in radio use by persons who are not primarily engaged in radio as a means of livelihood like the taxicab owners and industrial users and the other people who have been more and more using radio as an aid to their primary activity. . . . By authorizing the Commission to impose fines for violation of its rules and regulations we hope to command greater respect for these rules and regulations.

Hearings on S. 658 Before the House Committee on Interstate and Foreign Commerce, 82d Cong., 1st Sess. 71 (1951). Section 10 of the bill, as reported by the House Committee, modified somewhat the grounds for revocation contained in the Senate version. In addition, adopting Chairman Coy's suggestions, the House version of the bill included in the proposed new Section 312 of the Act both suspension and forfeiture provisions. H.R. Rep. No. 1750, 82d Cong., 2d Sess. 12-14 (1952).

As reported out of the conference committee, however, and as enacted, 66 Stat. 716 (1952), S. 658 conferred neither suspension nor forfeiture powers on the Commission. As explained in the conference report:

> The section [amended Section 312 of the Act] as it is retained in the conference substitute is the same as the House amendment insofar as the grounds for revocation are concerned, but the provisions which would have authorized the Commission to suspend licenses or to impose forfeitures have been eliminated.
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> It is believed that the authority to issue cease and desist orders will give the Commission a means by which it can secure compliance with the law and regulations by licensees. As an alternative to revoking the license in case of failure to obey a cease and desist order, the Commission will be able to invoke the aid of the courts, under section 401(b) of the act, to secure compliance. The courts will be able to enforce compliance through their power to punish for contempt.

H.R. Rep. No. 2426, 82d Cong., 2d Sess. 20 (1952).

Following the 1952 amendments to Section 312 of the Act, efforts were continued to be made to further broaden the Commissions's enforcement powers. In 1959, for example, S. 1737, 86th Cong., 1st Sess., sought to empower the Commission to levy forfeitures for violations of the Act or the Commission's regulations. No final action was taken on the measure, however.

Subsequently, in 1960, during the second session of the 86th Congress, a series of bills were introduced, proposing additional enforcement powers for the Commission under Section 312 of the Act, including forfeitures and the suspension of licenses. E.g., S. 1898, H.R. 7017, H.R. 10241, H.R. 10242, H.R. 11341, H.R. 11397, H.R. 11398, 86th Cong., 2d Sess. (1960).

During the House consideration of the various measures, Frederick W. Ford, then Chairman of the Commission, endorsed and urged adoption of the provisions for both forfeiture and suspension powers. Hearings on S. 1898 Before a Subcommittee of the House Committee on Interstate and Foreign Commerce, 86th Cong., 2d Sess. 65-67 (1960). In addition, however, Chairman Ford urged adoption of a new section to be added to Title V of the Communications Act, to authorize the Commission to issue temporary restraining orders in "appropriate cases":

> Section 312 of the Communications Act of 1934, as amended, provides for the revocation of a station license upon making certain findings after notice and opportunity for hearing. That section also provides that the Commission may, after notice and opportunity for hearing, enter a cease-and-desist order against any person who (1) has failed to operate substantially as set forth in a license or (2) has violated or failed to observe any of the provisions of this act, or (3) has violated or failed to observe any rule or regulation of the Commission authorized by this act or by a treaty ratified by the United States.
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> These sanctions are severe and the rights of the licensee are well protected by the hearing requirements of the act. In most cases this is as it should be; however, in some situations a more expeditious means of dealing with an undesirable situation appears to us to be in the public interest. The Federal Trade Commission is authorized in some situations to request the courts to enjoin or restrain an offending practice pending a final determination of the matter in an appropriate agency proceeding. In our

view, comparable legislation for the Federal Communications Commission would be in the public interest. Accordingly, we recommend that a new section be added to title V of the Communications Act to read as follows:

"Whenever the Commission has reason to believe—

"(*a*) that any person or station licensee is engaged in, or is about to engage in, any willful violation of this Act or failure to observe any of the provisions of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States, or for repeated failure to operate substantially as set forth in the licensee's instrument of authorization, and

"(*b*) that the enjoining thereof pending the invoking of the provisions of section 312 of this Act and until a show-cause order shall have been dismissed by the Commission or set aside by the court on review, or the order of the Commission to cease and desist made thereon has become final, would be in the public interest, convenience, or necessity, the Commission may, by any of the attorneys designated by it for such purpose, bring suit in a district court of the United States or in the United States court of any territory to enjoin such offense or violation. Upon proper showing a temporary restraining order and preliminary injunction shall be granted without bond. Any such suit shall be brought in the district in which such person or licensee resides or transacts business."

This new section would enable the Commission to move more expeditiously in critical cases without depriving our licensees of due process.

Id. at 64-65.

While the House report referred to Chairman Ford's testimony, H.R. Rep. No. 1800, 86th Cong., 2d Sess. 16, n.3, [illegible], n.2 (1960), the bill reported out of committee contained only the initially proposed suspension and forfeiture provisions.

Following Senate consideration of S. 1898, Hearings on S. 1898 Before the Communications Subcommittee of the Senate Committee on Interstate and Foreign Commerce, 86th Cong., 2d Sess. (1960), the House provision for suspension of licenses was deleted, and only the forfeiture provision was retained. S. Rep. No. 1857, 86th Cong., 2d Sess. 7-8 (1960). The committee report explained:

> At present the FCC's authority to enforce the Communications Act and other related statutes and its rules and regulations are four in number . . . The four sanctions authorized under existing statute are as follows:
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> 1. Revocation of license, section 312 of the Communications Act;
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> 2. Issuance of cease and desist orders, section 312 of the act; enforcement of cease and desist orders either through revocation or through court order (Sec. 401 (b) of the act) for violation of which contempt penalties may be imposed by a court;
>
> 3. The criminal penalties of fine or imprisonment, or both, for willfully and knowingly doing anything prohibited by the act, or for willfully or knowingly failing to do a thing required by the act (sec. 501 of the act); and
>
> 4. The criminal penalty of a fine of not more than $500 for each and every day during which any person willfully or knowingly violates any rule, regulation, restriction or condition made or imposed by the Commission under the act (sec. 502 of the act).
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> . . . .
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> We feel that the sanctions now available in the Communications Act, plus the forfeiture penalties herein being provided, give the Commission adequate tools to take effective action against offending licensees without the adverse results that flow from a temporary suspension of a broadcast facility. . . . .

Id. at 7.

The bill was enacted in the form reported out of the Senate committee. 74 Stat. 889, 47 U.S.C. §503(b) (1960).